IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

SA.No. 479 of 1993(F)

AS.71/1991 of ADDL. DISTRICT COURT, THALASSERY
OS.126/1990 of MUNSIFF COURT, KANNUR
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APPELLANT: RESPONDENT/DEFENDANT

V.K.KRISHNAN
RESIDING AT PUTHEN VEEDU
"SHAMA NILAYAM"
P.O. ANJARAKANDY
CANNANORE DISTRICT.

BY ADV. SRI.GOVIND K.BHARATHAN
N.MADHAVAN &
K.P.GEETHA.

RESPONDENTS:APPELLANT-PLAINTIFF

CHENGOTH KRISHNAN MARAR
S/O.A.V.KRISHNA MARAR
RESIDING AT KALARIVATHUKKAL
VALAPATTANAM
CANNANORE DISTRICT. (DIED. LRS IMPLEADED)
ADDL.R2.

RADHA, D/O.KRISHNA MARAR, AGED 55
KALARIVATHUKKAL, VALAPATANAM,
CANNANORE DISTRICT.

ADDL.R3

SANKARA NARAYANAN, S/O.KRISHNA MARAR
AGED ABOUT 53 YEARS, NEAR TOLL GATE
VALAPATTANAM, CANNANORE 670 010.
(ADDL.R2 AND R3 ARE IMPLEADED AS THE LRS OF THE
DECEASED RESPONDENT AS PER ORDER DATED 29/5/02
IN CMP NO.518/2000.)

BY ADV. SRI.V.GIRI FOR R2 AND R3
SMT.R.BINDU

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 22/3 /2007 THE COURT ON 22/03/2007 DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A. NO.479 OF 1993

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Dated this the 22nd day of March, 2007

JUDGMENT

Defendant in O.S.126/1990 on the file of Munsiff Court, Kannur is the appellant. Plaintiff therein is the respondent. Respondent instituted the suit for realisation of Rs.7000/- with interest and cost. According to respondent, on 20.3.1988 appellant borrowed Rs.7000/- and agreed to repay the same and later when repayment was demanded, appellant issued Ext.A1 cheque drawn in his account maintained in State Bank of India, M.G. Road Branch, Ernakulam for Rs.7000/- and when the cheque was presented for encashment, it was returned with an endorsement "refer to drawer"and when respondent sent Ext.A5 notice demanding the amount, Ext.A6 reply was sent disputing the liability and therefore the suit was filed. Appellant in his written statement contended that he did not borrow any amount as alleged and Ext.A1 was issued as a

signed blank cheque to enable respondent to discount the amount and appellant is not liable to pay any amount. It was contended that blank cheque was issued on 22.3.1984. In the written statement, it was further stated that the cheque was issued in 1983 and was utilised in the year 1988 and therefore the suit is barred by limitation.

2. Learned Munsiff on the evidence of PW1, DW1 and Exts.A1 to A6 and Exts.B1 and B2, disbelieving the evidence of PW1 and accepting the evidence of DW1 dismissed the suit. Respondent challenged the decree and judgment before the District Court, Thalassery in A.S.71/1991. Learned Additional District Judge on reappreciation of evidence accepted the evidence of respondent and rejected the evidence of appellant and granted a decree for realisation of the plaint claim. This appeal is filed challenging the judgment passed by the District Judge.

3. The appeal was admitted after formulating

the following substantial question of law.

Whether an undated blank cheque can be considered as a genuine document and an actionable claim can be initiated on the document.

4. Learned counsel appearing for appellant and respondent were heard.

5. The argument of the learned counsel appearing for the appellant was that Ext.A1 was issued as a blank cheque and even respondent admitted that when the cheque was issued, it was not dated and therefore the blank cheque is invalid and on the basis of the blank cheque, first Appellate Court should not have granted the decree. It was argued that eventhough Ext.A5 notice was sent in 1989, no action under section 138 of Negotiable Instruments Act was taken, and therefore the case of respondent that cheque was issued towards discharge of an existing liability should have been disbelieved. Learned counsel also argued that Exts.B1 and B2 establish that all the cheques from Ext.B1 cheque book were used during

the period 1983-84 and therefore Ext.A1 cheque was issued in 1983 or 1984 as claimed by appellant and not in 1988 as claimed by respondent and therefore at any rate, the plaint claim should have been rejected as barred by time.

6. Learned counsel appearing for respondent argued that learned Additional District Judge appreciated the evidence in the proper perspective and when respondent was examined as PW1 not even a suggestion was put to him that Ext.A1 cheque was issued either in 1983 or 1984 and therefore the claim of appellant that it was issued in 1983 or 1984 and not in 1988 has to be rejected. Learned counsel also argued that when examined as DW1, appellant admitted that the cheque was issued when respondent demanded money and it supports the case of respondent that Ext.A1 cheque was issued when repayment of the amount borrowed was demanded and there is no reason to interfere with the appreciation of evidence.

7. The suit is not based on Ext.A1 cheque as

such. On the otherhand, it is for realisation of the amount borrowed by appellant. What was contended by respondent in the plaint and at the time of evidence was that appellant borrowed Rs.7000/- from respondent on 20.3.88 and later when repayment as promised was demanded, towards the repayment, Ext.A1 cheque was issued. Therefore the suit cannot be treated as based on Ext.A1 cheque as canvassed by learned counsel appearing for appellant.

8. There are two opposite cases for the parties. Ext.A1 cheque was issued by the appellant to the respondent is an admitted fact. According to respondent, it was issued towards repayment of the amount borrowed and that too when the amount agreed to be repaid was demanded. According to appellant, Ext.A1 cheque was issued to help respondent to discount the cheque. When appellant was examined as PW1, it was deposed by him that the cheque was issued, when respondent claimed the amount. That exactly is the case of the respondent. The case of

appellant was that Ext.A1 cheque was issued as a blank cheque to enable respondent to discount the cheque. According to respondent, except the date, the cheque was filled up. The trial court did not accept the evidence of PW1 and instead accepted the evidence of DW1. First Appellate Court accepted the evidence of PW1 and rejected the evidence of DW1. The question is whether in exercise of the powers of this court under section 100 of the Code of Civil Procedure, the appreciation of evidence can be interfered and the view of this court could be substituted for the view of the first Appellate Court.

9. When the evidence of PW1 and DW1 is appreciated in the proper perspective, the view taken by the first Appellate Court is definitely a possible and reasonable view. Eventhough appellant contended that cheque was issued in 1983 or 1984, when PW1 was cross examined not even a suggestion was put to PW1 that the cheque was issued in 1983 or in 1984 or that it was not issued in 1988.

Again when DW1 was examined he did not say when exactly the cheque was issued, though it was stated that it was issued in 1984. At the same time the written statement contains two versions namely, the cheque was issued on 22.3.1984 and also that it was issued in 1983. Though reliance was placed, on the entries in Ext.B1 counterfoils of the cheque book and Ext.B2 passbook, comparison of the cheque numbers seen in Ext.B1 and the entries in Ext.B2 show that Ext.B1 cheque book was used by appellant during 1983 and 1984. It is seen that all the cheque leaves in Ext.B1 cheque book were not utilised by the appellant during 1983 and 1984. When a cheque is issued by a person towards the repayment of the amount due to that person, he is not expected to go to the Bank of the drawer and find out whether the cheque was issued from the cheque book currently used or the cheque book which was used some years back. Therefore, even if Ext.B1 cheque book was used during 1983 or 1984, for that reason, the case of the respondent that

cheque was issued in 1988 cannot be disbelieved. Therefore on that ground, finding of the learned District Judge cannot be interfered .

10. It was vehemently argued by learned counsel appearing for appellant that as respondent admitted that cheque was not dated when the cheque was issued, it is an invalid cheque and subsequent adding of the date in Ext.A1 amounts to material alteration and therefore respondent is not entitled to get the decree granted by the first appellate Court. As rightly pointed out by learned counsel appearing for respondent when it is the case of the appellant that he issued Ext.A1 cheque to be treated as a valid cheque and that too to enable the respondent to discount the cheque, as claimed in Ext.A6 reply notice as well as in the written statement, it is clear that by issuing the cheque appellant impliedly authorised respondent to fill up the date, as the cheque was not dated. Section 20 of the N.I. Act provides that where one person signs and delivers to another a paper

stamped in accordance with the law relating to negotiable instruments then in force and either wholly blank or having written thereon and incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder. Section 20 only enables the payee to complete the Negotiable Instrument Act with regard to the amount making it clear that once the amount is added the drawer of the cheque will be liable to the holder in due course for the said amount. But Section 20 does not deal with the filling up of the date of

the cheque. From the evidence of PW1 that Ext.A1 cheque was issued to be used as a valid cheque. It therefore implies that appellant granted the implied authority to respondent to write the date of the cheque and if so, it does not amount to material alteration. Whatever it be, as the suit is not for realisation of the amount due under the cheque, but for realisation of the amount which was granted on loan earlier and Ext.A1 cheque is used only to prove the existence of a liability which originated under the original loan, that question is not very material. The Addditional District Judge appreciated the facts in the proper perspective and accepted the case of PW1. I do not find any reason to interfere with that finding.

The appeal is therefore dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A.NO.479 /93

JUDGMENT

22nd March,2007